

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

JENNIFER KERR

Respondent

v.

VATTEROTT EDUCATIONAL CENTERS, INC.

Appellant

DOCKET NUMBER WD76903

DATE: August 26, 2014

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Jack Richard Grate, Judge

Appellate Judges:

Division Three
Gary D. Witt, P.J., Joseph M. Ellis, and Thomas H. Newton, JJ.

Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

JENNIFER KERR, Respondent, v. VATTEROTT
EDUCATIONAL CENTERS, INC., Appellant

WD76903

Jackson County

Before Division Three Judges: Witt, P.J., Ellis, and Newton, JJ.

Kerr sued Vatterott for its unlawful act of selling a seat to her through the use of deception, under the Missouri Merchandise Purchasing Act (MMPA). At a jury trial, Kerr showed that Vatterott deceived her into believing that the credits earned from Vatterott's Medical Assistance Program (MA Program) would transfer to a nursing degree and that she would earn enough money as a medical assistant to pay for her nursing degree. Additionally, Kerr showed that Vatterott deceived her into believing that she had purchased a seat in the MA Program, which offered an associate's degree, when, in actuality, she had purchased a seat in the Medical Office Assistant Program (MOA Program), which offered a certificate. Kerr financed her education with student loans. Kerr adduced evidence from former Vatterott students who experienced similar deception.

Kerr also adduced evidence that top Vatterott employees knew about the deceptive practices occurring in its admissions office and did not resolve the issue; that Vatterott students believed that they were enrolled in the MA Program when they were actually enrolled in the MOA Program; and that a certificate holder was not marketable to employers. Kerr testified her Vatterott education was worthless because she could not obtain a job with a certificate and the earned credits did not transfer to a nursing degree. The jury agreed with Kerr and awarded her compensatory (actual) damages in the amount she paid for her education. Additionally, the jury awarded \$13 million in punitive damages, which were subsequently reduced to comply with a statutory cap. The new award was approximately \$2 million. Vatterott appeals.

AFFIRMED. MOTION FOR ATTORNEY FEES ON APPEAL IS GRANTED AND REMANDED FOR DETERMINATION.

Division Three Holds:

In the first and second points, Vatterott challenges the denial of its motion for directed verdict because the MMPA claim should not have been submitted to the jury. A plaintiff's claim is submissible if there is substantial evidence to support every essential fact to the defendant's liability. First, Vatterott claims that Kerr's evidence to support a finding that she purchased the seat primarily for a personal purpose was insufficient because Kerr's basis for testifying that her education was worthless was that it failed to advance her nursing career. Vatterott claims that this testimony amounted to an admission that the purpose was career related, and not personal. Upon review of the record, we believe there was substantial evidence, including her testimony that the education did not transfer to a nursing degree, from which the jury could have decided that Kerr purchased the seat primarily for a personal purpose. Second, Vatterott claims that Kerr's evidence to support a finding that the misrepresentations deceived her into purchasing the seat were insufficient because Kerr signed contemporaneous documents negating the oral

representations. The law Vatterott cites for support is not applicable in MMPA claims. Thus, we deny Vatterott's first and second points.

In the third point, Vatterott challenges the submission of a general damages instruction (MAI 4.01) because, in MMPA cases, the law requires the submission of the benefit-of-the-bargain instruction (MAI 4.03), which the court rejected. Under the law, an MAI instruction must be given according to the Notes on Use. Although the Notes on Use mandate the submission of MAI 4.03 in misrepresentation cases, such as this, they also provide MAI 4.01 should be used when other damages are to be awarded. Additionally, case law states that when a plaintiff argues that no value was obtained from its purchase, the damages are not limited to the benefit-of-the-bargain method. Because Ms. Kerr pleaded and proved that her education was worthless, the trial court did not err instructing the jury on actual damages. We therefore deny Vatterott's third point.

In the fourth point, Vatterott challenges the constitutionality of the punitive damages award because the amount of the actual damages award in relation to the punitive damages award is in excess of a single-digit ratio, which violates substantive due process under United States Supreme Court precedent. We apply three factors in determining whether the amount of the punitive damages award is grossly excessive in relation to the harm. The degree of reprehensibility is the most crucial factor in determining an amount's constitutionality, and where the actual damages award was small and the conduct was egregious, a larger punitive damages award is thus justified. Vatterott engaged in practices and patterns of deceiving financially vulnerable applicants into enrolling in its MOA Program and financing it with student loans of more than \$20,000, despite knowing that the certificate earned from the program would not provide its holder with employment to repay the loan and pay living expenses. Vatterott's conduct was egregious. The amount is justified. We deny Vatterott's fourth point.

Finally, Ms. Kerr filed a motion for appellate attorney fees, which was taken with the case. We grant the request and remand to the trial court to determine the reasonableness of the fees.

Therefore, we affirm the trial court's judgment and remand the cause to trial court to determine a reasonable attorney fee award.

Opinion by Thomas H. Newton, Judge

August 26, 2014

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